IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1257 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMED YUSUF S/O ISMAILBHAI BAGWAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1257 of 2001

MR BP MUNSHI for Petitioner No. 1

MS NIRALI B MUNSHI for Petitioner No. 1

MR VM PANCHOLI, LD ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/04/2002

JUDGEMENT

#. The petitioner herein has preferred this application under Section 482 of the Criminal Procedure Code, 1973, (for short "the Code") for quashing and setting aside a

FIR being CR No.I-102/1999 registered before Vejalur Police Station of Ahmedabad City on 29.3.1999 at 1:30 o'clock by one Chiragbhai Dinkarbhai Dave of Ahmedabad against three accused persons named in the FIR, placed at page-11, alongwith other 15 to 20 persons not named in the FIR.

#. Incidentally the name of the petitioner herein has not been included in the said FIR.

#. The case of the said informant - Chiragbhai Dinkarbhai Dave is that on 20.3.1999 at about 11:00 p.m. the three accused persons named in the Column No.5 of the said FIR at page-11 had committed the offence punishable under Sections 143, 147, 148, 149, 323, 302, 120-B of the Indian Penal Code and under Section 135(1) of the Bombay Police Act. It is also alleged in the FIR that the informant and other persons came to know that some cows were being carried to the slaughter house and, therefore, the informant and other persons were checking the vehicles near Vishala Circle. At that time, three persons named as accused in the said FIR arrived there and asked the informant as to why he has stopped the vehicle on the road. There was some exchange of words and ultimately the said three accused persons alongwith the mob of 15 to 20 persons had assaulted the informant by deadly weapon like swords and knife. That they committed the assault on informant and other persons and ultimately two of the said three accused persons caught hold of Haribhai and third accused person had given blow on the back of the Haribhai. It is also stated in it that Haribhai succumbed to the injuries received by him at the said place.

#. The present petitioner is not shown to be one of the accused person, named in the said FIR. Therefore, the petitioner says that he was never involved in the said offence and there is no material against the present petitioner and, therefore, the FIR as aforesaid be quashed against the present petitioner.

#. Notice was issued at the first instance and rule was issued thereafter.

#. Mr.V.M.Pancholi, learned APP appears for the State of Gujarat in response to the service of rule. I have heard Mr.B.P. Munshi, learned advocate for the petitioner and Mr.V.M.Pancholi, learned APP. They have taken me through the police papers, since the investigation is over and even the charge-sheet has also been filed.

#. During the course of argument the learned APP Mr.Pancholi has drawn my attention to the statements of certain witnesses and the FIR. So far the FIR is concerned there is no disclosure of the name of the present petitioner as one of the accused person and there is no dispute about the same. Then the learned advocate for the petitioner took me to the FIR at page-21, which shows that some persons had arrived at on a two wheeler and they run away after incident was over. However, the said FIR does not show that the petitioner was one of these persons on the spot. Then he also took me to the statements of witnesses, one of them is Sardarkhan Amirkhan Pathan at page-51 of the paper book placed on record. On going through the statement of this witness also, the name of the petitioner has not been disclosed. Then he has taken me through the statement of Mohammad Jakir at page-53 of the said compilation. On going through the said statement also the name of the petitioner has not been disclosed. On going through this statement also I do not find that the name of the petitioner has been disclosed by the said witness. Then he took me through the statement of Rafik Ahmed at page-55 of the said compilation. On going through this statement of page-55 and 56 also the name of the present petitioner has not been disclosed and witness does not say that he had seen the petitioner on the spot at or before or even after the incident.

#. Then an attempt was made to show that the scooter referred to in the FIR belongs to the petitioner and it was found out side the house of the petitioner. Even if we accept it, there is some doubt about ownership of the said vehicle and, even if we take it that the benefit of that doubt may not be extended to the petitioner then also there is absolutely no material to show that the petitioner was driving the said vehicle at the relevant point of time or he was there as pillion rider on the said vehicle. It is also not in police papers that the petitioner had allowed somebody to use his vehicle for committing the aforesaid offence of murder. It seems that nowhere the name of the petitioner has been disclosed. Even if we go through the entire police papers no witness has identified the petitioner as person in mob present at the time of the commission of the said offence.

#. The learned APP has shown me a decision of State of Karnataka vs. M. Devendrappa, reported in JT 2002(1) SC 213, in order to argue that though the powers under Section 482 are very wide in scope, the inherent power cannot be exercised to stifle a legitimate prosecution

and the Court must be careful to see that its decision in exercise of this power is based on sound principle.

##. Even keeping the principle annunciated in this decision in mind, it is very clear that the name of the petitioner has not been disclosed at any point of time and no witness has referred this petitioner as a person present on the spot before or after the incident, even at the time when the incident had taken place.

##. This shows that there is absolutely no material showing the involvement of the present petitioner directly or indirectly in the incident in question. Therefore, when there is absolutely no material on record to show the involvement of the present petitioner it would be futile to ask him to face the trial.

##. In above view of the matter, I am of the clear opinion that there is absolutely no material against the present petitioner though the investigation is over and charge-sheet has been filed. In that view of the matter, there is no reason for this Court to ask the petitioner to face the trial, till the trial over and judgment is pronounced. In that view of the matter, there is no alternative but to quash the complaint qua the petitioner.

##. It is not much in dispute that the aforesaid FIR was culminated in a charge-sheet before the learned Metropolitan Magistrate and the matter has been committed to the Sessions Court wherein it has been registered as Sessions Case No.185/1999 and, therefore, the said sessions case will be required to be quashed qua the petitioner.

##. For the foregoing reasons, this application is allowed. The Sessions Case No.185/1999 arising out of the D.C.B. Police Station CR No.I-102/1999 filed on 29.3.1999 in Vejalpur Policce Station is ordered to be quashed qua the petitioner only. Rule is made absolute to that extent. The said sessions case shall proceed with respect to remaining accused persons in accordance with law.

(D. P. BUCH, J.)

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